IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1058 OF 2007

Kachribai Lukha Joshi ...Petitioner
Versus
Pandurang Shankar Chaudhary & Ors. ...Respondents

Shri D.K.Ghaisas for the Petitioner.
Shri Dhakephalkar, Sr counsel with Shri A.P.Mhatre for the Respondent Nos.1 and 2.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 04, 2007.

P.C.:

1. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner has taken exception to order dated 19th December, 2006 passed by the trial Court below Application at Exhibit 249. The Petitioner is the original Plaintiff. After the cross-examination of the witnesses examined by the ' Respondent-Defendants was recorded, an Application was made at Exhibit 249 by the first and second Respondents (original Defendant Nos.1 and 2) for exhibiting 21 documents the description of which was incorporated in the said Application. On 07th December, 2006 the learned trial Judge passed following order:

> "Allowed in respect of certified copies of public documents and documents proved in evidence".

2. There is a further order passed on 19th December, 2006 which records that the objection raised by the Petitioner to the agreements dated 05th March, 1975, 19th October, 1976 and 20th April, 1984 as regards insufficiency of stamps has been over-ruled.

3. Shri Ghaisas appearing for the Petitioners submitted that the said three agreements are not duly proved and therefore, the same cannot be exhibited. Shri Dhakephalkar, learned senior counsel appearing for the first and second Respondents submitted that the said three documents have been duly proved in evidence and therefore, the same will have to be exhibited as per order dated 07th December, 2006. He submitted that there is no merit in so far as challenge to the said documents on the ground of insufficiency of stamps is concerned.

4. I have considered the submissions. From first paragraph of order dated 19th December, 2006 it appears that while passing the said order, the learned trial Judge has dealt with objection raised by the Petitioner to the admissibility of the said documents on the ground that the same are insufficiently stamped. The learned trial Judge has rejected the said objection on the ground that the amendment to Article 25 of Schedule I of the Bombay Stamp Act, 1958 was brought into force with

effect from 10th December, 1985 and therefore, the amended Article 25 will not apply to the aforesaid three documents which are executed prior to coming into force of the said amendment. It is obvious that said amendment has no retrospective effect and therefore, the learned trial Judge was justified in taking the view which he has taken.

5. However, I find that there is no adjudication made by the trial Court on the question whether the said three documents have been duly proved. As the evidence has been led by the first and second Respondents, the trial Court will have to consider the question whether the said three documents are proved in accordance with the of law of evidence and if the same are proved, the documents will have to be exhibited in terms of order dated 07th December, 2006 passed on the Application at Exhibit 249. This aspect will have to be decided by the trial Court after hearing all concerned parties. It must be noted here that the objection raised by the Petitioner is confined only to the said three documents out of 21 documents which are listed in the Application at Exhibit 249. The trial Court will decide whether the said three Agreements have been duly proved.

6. Subject to what is stated above, the Writ Petition is disposed of.

JUDGE